

### **REMARKS**

Currently, claims 1-52 are pending. The Examiner has restricted the claims in the case to four (4) groups, as follows:

1. Invention I, claims 1-19, 31-42, and 47-52, drawn to a composition comprising a hetero-dimer polypeptide with caspase-9 monomer;
2. Invention II, claims 20-25, drawn to a method of inhibiting the activity of caspase-9 and an effector caspase;
3. Invention III, claims 26-30 and 46, drawn to a method of making procaspase-9 zymogen and caspase-9 polypeptide homologue; and
4. Invention IV, claims 43-45, drawn to an isolated nucleic acid molecule 90% identical to the nucleic acid encoding caspase-9 F404D, caspase-9  $\Delta S$  or caspase-9  $\Delta L$ , a vector and a host.

Applicant respectfully traverses the Restriction Requirement and requests reconsideration. In order to be fully responsive, Applicant has provisionally elected, with traverse, the invention of Invention Group II as defined by claims 20-25 directed to a method of inhibiting the activity of caspase-9 and an effector caspase.

It is respectfully submitted that the search classification for each invention group will substantially overlap. Each of the claims, as presently recited, are directed to caspase-9 and methods of using caspase-9. The Examiner will not be seriously burdened by searching and considering the inventions as described in all the currently pending claims. Accordingly, the Examiner has not established a proper restriction requirement under MPEP § 803.

By this election, Applicant does not admit, nor does Applicant waive the right to argue against at a later date, the Examiner's statement that the groups of inventions are patentably distinct. Applicants expressly reserve the right to present the claims of Invention Groups I, III or IV, or other claims, in one or more divisional, continuation, or continuation-in-part applications at a later date.

### CONCLUSION

Applicant has timely filed this response. In the event that an additional fee is required for this response, the Commissioner is hereby authorized to charge such fees to Deposit Account No. 50-0436.

Should the Examiner have any questions or comments, or need any additional information from Applicant's attorney, he is invited to contact the undersigned at his convenience.

Respectfully submitted,



By: \_\_\_\_\_

Raymond A. Miller  
Reg. No. 42,891

Dated: August 24, 2006  
PEPPER HAMILTON LLP  
500 Grant Street  
One Mellon Bank Center, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 454-5813  
(412) 281-0717 - facsimile